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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re FIONA C., a Person Coming
Under the Juvenile Court Law.

B303474

(Los Angeles County
Super. Ct. No. 18CCJP06669A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

AMANDA M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County. Sabina A. Helton, Judge. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Stephen D. Watson, Deputy
County Counsel for Plaintiff and Respondent.

Amanda M. (mother) appeals from an order issued at a contested six-month review hearing pursuant to Welfare and Institutions Code section 366.21, subdivision (e).¹ At the hearing, the juvenile court determined that there was a substantial risk of detriment to Fiona C. (born Oct. 2018) if placed in mother's custody, thus the child should remain suitably placed. We find that substantial evidence supported the juvenile court's factual determination that there remained a substantial risk of detriment to the child if returned to mother, therefore we affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Children and Family Services (DCFS) was notified when mother tested positive for amphetamine and methamphetamine at the time of Fiona's birth in October 2018. Mother's nurse reported that mother was going through drug withdrawals and needed padded rails on her bed to prevent her from injuring herself. Fiona was also going through withdrawals and not sleeping. Fiona's withdrawal symptoms were such that she had to be treated with intermittent doses of morphine.

When a social worker interviewed her, mother stated that she had been using drugs for two years and did not realize that she was pregnant until halfway through her pregnancy. Mother denied methamphetamine use but claimed her drug of choice was Fentanyl, a synthetic opioid that she obtained on the street and used the day before Fiona's birth. Mother used Fentanyl because she ran out of her withdrawal medication and saw no other option. Mother had recently participated in a drug treatment program but left because she did not feel safe. Mother intended

¹ All further statutory references are to the Welfare and Institutions Code.

to continue treatment upon her release from the hospital. Mother acknowledged being arrested two years earlier for receiving stolen property. After she was discharged from the hospital, mother did not enter treatment.

Chris C. (father) was present at the hospital for Fiona's birth.² As father appeared pale and sweaty, a nurse suspected he was a drug user. When the social worker interviewed father a few days later at the DCFS office, father was observed to have some scarring as well as open sores on his arms and hands. Father was pale and his pupils were an off-white or yellowish color. Father denied drug use but was aware of mother's drug use. Father reported that they discovered mother's pregnancy when she was about 22 to 24 weeks pregnant. Father had taken mother to a treatment center but she did not remain there. Father reported that mother left the treatment center because she did not receive the treatment she was supposed to receive.

On October 12, 2018, the juvenile court granted a removal warrant authorizing DCFS to take Fiona into protective custody.

Petition and detention

On October 16, 2018, DCFS filed a petition on behalf of Fiona pursuant to section 300, subdivision (b). The petition alleged that mother's drug abuse put Fiona at risk of substantial harm, and that father knew or reasonably should have known of mother's substance abuse and failed to protect the child.

On October 17, 2018, the juvenile court detained the child from parental custody, and placed her with the paternal grandparents. The parents were granted monitored visits.

² Father is not a party to this appeal.

Reports

DCFS filed a jurisdiction/disposition report on November 6, 2018. Hospital documentation indicated that Fiona was prenatally exposed to Fentanyl, marijuana, Suboxone, Vyvanse, Adderall, and possibly heroin.

Father had an extensive criminal history which included multiple arrests related to illegal substances. He was suspected by law enforcement to be a street level narcotics dealer.

Mother (then age 33) came into the DCFS office for an interview in early November, where she admitted that she began drinking and using drugs at age 18. By the age of 19 her drinking was “out of control.” She had been involved in four traffic accidents. As a result, she started having back problems and was prescribed Percocet. Mother liked the effects of the Percocet and began to take it recreationally. She also tried cocaine. By age 21 she realized she needed help and entered an intensive outpatient program.

After that she was sober for six years. She went to AA meetings, had a sponsor, and was doing very well. She started drinking again after she stopped going to AA meetings. When her drinking again became heavy, mother entered an inpatient program and then moved to Los Angeles to a sober living home. After meeting a man at the sober living home who was a heroin user, she began living with him and soon tried heroin. She became a “daily user” until they broke up and she returned to sober living.

Mother met father two and a half years earlier. They moved in together four or five months later and lived together after that. Father was aware of mother’s history of substance abuse. She had been using Fentanyl for about a year because she

was suffering pain from a chipped tooth. Mother became addicted and would smoke Fentanyl about every 20 hours.

Mother had been diagnosed with depression, anxiety, ADHD, and compulsive disorder. She had participated in counseling on and off since the age of 22. Mother took psychotropic drugs for about six or seven years, but the last time she saw a therapist or psychiatrist was two years ago.

Mother had one prior arrest in California in January 2015, for receiving stolen property. Mother had some of her roommate's things in her car, which included two passports and credit cards that had been stolen. Mother was arrested and charged with a misdemeanor.

Mother stated that father did not use drugs and that she was ashamed of using drugs while pregnant. Mother noted that when using opioids she did not get her period, which is why she did not realize that she was pregnant. However, mother continued to use Fentanyl after she learned she was pregnant. She went into a drug rehabilitation program but did not like it. Mother could not find a doctor that would prescribe Suboxone.

During the interview, mother excused herself to go to the restroom. When she returned, her demeanor was different. She seemed "loopy" and at one point she dozed off. The social worker conducting the interview believed that mother was under the influence of a controlled substance. At the beginning of the interview mother was anxious, fidgety, and would not make eye contact. After the restroom break, there was a significant change in mother's demeanor and she had trouble staying awake.

First amended petition

DCFS filed a first amended petition on November 7, 2018. In addition to the original two allegations regarding mother's

substance abuse and Fiona's exposure to drugs in utero, the amended petition added an allegation regarding father's drug use. It alleged that father was an abuser of marijuana and prescription medication, rendering him incapable of caring for the child.

Mother's arrest

On November 27, 2018, mother was arrested on drug charges and for grand and petty theft. Heroin, cocaine, methamphetamine, Xanax pills, and an "unusual amount of credit cards" were found in mother's possession. When police asked mother if she knew that heroin and methamphetamine were illegal, mother responded, "Yes, I am an addict."

Further reports

On January 6, 2019, mother enrolled in the Betty Ford program. At intake, she was diagnosed with opiate use disorder (severe), methamphetamine use disorder (severe), and alcohol use disorder (moderate). In March 2019, DCFS reported that mother had been testing negative for drugs with the exception of three occasions. On January 5, 2019, mother tested positive for methamphetamine, amphetamine, and cannabinoids. On January 15, 2019, mother tested positive for heroin. And on January 25, 2019, mother tested positive for methamphetamine, amphetamine, cannabinoids, MDMA, and oxycodone. Mother claimed that she was moving on from father. She admitted that father sold drugs and that he had been her provider. Mother was having visits with Fiona on site.

Mother told the social worker that father entered Betty Ford because he knew that mother was entering Betty Ford. Upon father's arrival at Betty Ford, he handed mother a sweatshirt that had methamphetamine and heroin hidden in it.

On another occasion, mother met with father and he provided her drugs. As a result, mother had a relapse and tested positive. Father was expelled from Betty Ford on January 12, 2019, as he was found to have methamphetamine, heroin and Xanax. Mother did not know where father was residing.

The DCFS social worker spoke to mother's case worker on April 19, 2019, who indicated that mother was complying with the program and had a positive attitude. However, mother needed to become more involved with the child and learn about the child's medical and developmental needs. Mother's case worker also recommended that mother complete parenting education. Mother was projected to be discharged from the program on April 24, 2019.

Mother was having monitored visits with Fiona twice a week at a mall. Mother usually arrived at the visits five to ten minutes late and would leave about an hour and 10 or 15 minutes after she arrived with an excuse that she had something to do. The monitor observed that mother was appropriate and affectionate with Fiona but needed to work on her parenting skills. The monitor speculated that mother did not have adequate parenting insight as she had not spent a lot of time with Fiona.

The paternal grandmother told the social worker that she was worried because mother's visits might be liberalized. Mother was moving in with an ex-drug addict, and paternal grandmother was concerned that mother would be allowed to bring Fiona to her apartment.

Jurisdiction and disposition

On April 23, 2019, the juvenile court sustained the allegations in the first amended petition. The court declared

Fiona a dependent, removed her from parental custody, granted mother monitored visits with DCFS discretion to liberalize, and ordered reunification services. Mother was ordered to participate in parenting classes, individual counseling to address substance abuse and co-dependency, and a full drug and alcohol treatment program with drug testing and a 12-step program.

Subsequent reports

On October 10, 2019, DCFS reported that Fiona was residing with paternal grandparents and doing well. Mother was visiting the child two to three times per week at a local library, and the caregivers had no concerns.

Mother had been discharged from the Betty Ford program on May 29, 2019, and she continued to receive outpatient services and was meeting with her substance abuse counselor weekly. Mother's counselor said mother was doing well, maintained a good attitude, focused on her program, and did not appear to be hiding anything. Mother submitted to a hair follicle test on September 19, 2019, that covered a period of 90 days and was negative for all substances. Mother was attending a 12-step program and her counselor found her extremely dedicated.

Mother had completed parenting classes on October 10, 2019. Her participation was satisfactory.

DCFS recommended that Fiona not be returned to mother's care. Mother needed to complete individual counseling and demonstrate continued sobriety before her visits could be liberalized.

On November 20, 2019, DCFS reported that mother was having three-hour visits with Fiona, and the middle hour was unmonitored. The caregivers stated that the visits were going well. Mother continued to test negative for drugs, and she

provided documentation that she had enrolled with a licensed therapist on November 13, 2019.

DCFS recommended additional visitation for mother while she continued to demonstrate sobriety.

Six-month review hearing

The contested six-month review hearing was held on December 4, 2019. Both parents were present and represented by counsel. Mother's counsel argued that Fiona should be returned to mother's care, pointing out that pursuant to section 366.21, subdivision (e), the court "shall order the return of the child to his or her parent at the six-month review hearing unless the court finds by a preponderance of the evidence that return of the child to his parent will create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." Mother's counsel argued that DCFS could not meet its burden of showing detriment. If the court was not inclined to allow return, mother's counsel asked that "upon assessment of the mother's second roommate, that the child should begin having overnights in [mother's] home."

Minor's counsel opposed returning the child to mother's care. Minor's counsel expressed concern that mother had only one hour of unmonitored time during the visits, and "taking care of a one-year-old is very different from a one-hour unmonitored visit." Minor's counsel believed monitored overnights needed to take place before the court could return the child to mother's care, since the child was not verbal and counsel would not know how the visit went other than what mother was reporting.

DCFS recommended liberalization of mother's visits, but was not prepared to recommend overnight visits until it was clear where such visits could safely take place.

The juvenile court found by a preponderance of the evidence that continued jurisdiction was necessary. Return of the child to the physical custody of the parents would create a substantial risk of detriment to the safety, protection, or physical or emotional wellbeing of the child. The current placement continued to be necessary and appropriate. The parents were in substantial compliance with the case plan. For mother, the juvenile court declined to order overnights but asked DCFS to assess her roommate and ordered mother's visits to be "increased both in time and in unmonitored time."

Appeal

Mother filed a notice of appeal on December 19, 2019, challenging the juvenile court's finding of continued suitable placement at the six-month review hearing.

DISCUSSION

I. Applicable law and standard of review

At a six-month review hearing held pursuant to section 366.21, subdivision (e), the juvenile court must return the child to a parent "unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.21, subd. (e).) "The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (*Ibid.*)

The detriment which requires continued jurisdiction and removal under section 366.21 need not be akin to that which necessitated juvenile court jurisdiction in the first place. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 900.) "[W]hile the court

must consider the extent the parent has cooperated with the services provided and the efforts the parent has made to correct the problems which gave rise to the dependency . . . , the decision whether to return the child to parental custody depends on the effect that action would have on the physical or emotional well-being of the child.” (*Id.* at p. 899.) When determining whether return of a minor to the parent would be detrimental to the child, the juvenile court may consider many factors including the parent’s awareness of the needs of the child, the minor’s failure to live with the parent for long periods of time, and the manner in which the parent has conducted herself in relation to the minor in the past, among other things. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704-705).

On appeal from a finding that a return to the parent would be detrimental to the child pursuant to section 366.21, we must determine whether the record contains substantial evidence of such detriment. (*In re Mary B.* (2013) 218 Cal.App.4th 1474, 1483.) We review the record most favorably to the prevailing party and indulge all inferences to uphold the court’s ruling. (*Ibid.*)

II. Substantial evidence supported the juvenile court’s order that the child should remain suitably placed

Mother argues that DCFS failed to meet its burden of demonstrating detriment pursuant to section 366.21, subdivision (e). Mother argues that she was in compliance with her case plan, was committed to her sobriety, enjoyed unmonitored visits with Fiona without incident, was capable of housing Fiona, and was ready and capable of providing appropriate parental care for her daughter. Mother argues that mother’s lack of overnight visits does not constitute a substantial risk of detriment.

Under the substantial evidence standard of review, we must view the record in the light most favorable to the lower court's decision. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) The record revealed that mother had a long history of drug addiction and failed attempts to remain sober. Over the course of 15 years, starting when she was 18 until the age of 33, mother completed two treatment programs but relapsed both times. When she was pregnant with Fiona, mother lived with a drug dealer and used amphetamine, methamphetamine, Fentanyl, marijuana, Suboxone, Vyvanse, Adderall, and possibly heroin. After giving birth, mother's withdrawal symptoms were such that she needed padded rails on her hospital bed, and Fiona's withdrawals were so intense that she needed morphine. Further, mother did not remain free of drugs after Fiona's birth. She appeared to be under the influence of drugs during an interview at DCFS, and after the detention hearing was arrested for possession of drugs and theft. Mother admitted to police then that she was an addict. Considering mother's 15-year history of drug and alcohol abuse, the juvenile court did not err in determining that the risk to Fiona was too great for an immediate return to mother's custody.

Courts have recognized that parents who suffer chronic substance abuse over many years must show more than several months of sobriety in order to demonstrate that they have truly overcome the problem. (See, e.g., *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081; *In re Amber M.* (2002) 103 Cal.App.4th 681, 686-687; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423.) Mother points out that all of these cases involve petitions under section 388, which allows for modification of a juvenile court order where the parent shows changed circumstances and

requests a modification that would be in the best interests of the child. While mother is correct that these cases were decided under a different procedural mechanism, and thus involve a different burden, they express an insight that has greater application.

As mother acknowledges, the purpose of reunification is for mother “to overcome the problem that led to removal in the first place. [Citation.]” (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748.) As the case law has recognized, a brief period of sobriety after many years of drug addiction does not prove that an individual has “overcome” that drug addiction. In this case, the juvenile court recognized that mother was “moving in the right direction” and that mother would soon be ready for overnight visits, but had not yet overcome her problems sufficiently to have Fiona safely placed in her custody.

Fiona was just one year old at the time of the six-month review hearing. As Fiona’s counsel pointed out, Fiona was non-verbal and incapable of reporting any problems during unsupervised visits with mother. Under the circumstances, the juvenile court did not err in carefully weighing mother’s past history of substance abuse against her relatively short period of sobriety. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767 [in children of tender years, the absence of adequate supervision and care poses an inherent risk to their physical health and safety].)

In addition, while mother successfully completed the Betty Ford program, her case manager noted that she needed to develop a better understanding of parenting and her child’s developmental milestones. The monitor for mother’s visits with Fiona also noted that mother arrived late, left early, and needed to improve her parenting skills. Paternal grandmother noted

that mother was moving in with an ex-drug addict, and one of mother's two roommates had not yet been cleared by DCFS. These additional facts supported the juvenile court's determination that a return to mother created substantial risk to Fiona.

Mother cites *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400, for the proposition that DCFS's burden of showing detriment is a fairly high standard: "It cannot mean that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.' [Citation.] Rather, the risk of detriment must be *substantial*, such that returning a child to parental custody represents some danger to the child's physical and emotional well-being. [Citations.]" Notably, the child at issue in *Yvonne* was 11 years old, and had expressed "fear, anxiety and unhappiness" with her mother's living arrangement. (*Id.* at p. 1399.) The mother argued that her housing situation -- a long-term shelter -- was not a sufficient reason to deny her custody of her daughter. The mother was safely parenting her younger son at the shelter and had been sober for more than a year. (*Id.* at p. 1401.) Under those circumstances, the agency failed to meet its burden of showing detriment to the 11-year-old girl upon return to her mother's custody. Here, in contrast, there was a substantial risk of detriment to one-year-old Fiona, and such risk went beyond mother's housing situation.

Mother also argues that *In re E.D.* (2013) 217 Cal.App.4th 960 (*E.D.*) presents a situation similar to the one before us in this matter. However, in *E.D.* the child had participated in overnight visits with the parent (father) and the unsupervised overnight

visits were going well. (*Id.* at p. 963.) The minor had participated in conjoint therapy with the father and had consistently expressed a desire to live with him. (*Id.* at pp. 963-964.) Further, the father had fully complied with his case plan, including anger management, counseling, and parenting programs. (*Id.* at p. 964.) Significantly, the child services department supported the child's return to the father. (*Id.* at p. 966.) Although the juvenile court found the minor's current placement preferable, it did not cite any evidence that returning the child to his father's custody would create a substantial risk of detriment to the child. Under those circumstances, the juvenile court's decision denying father custody was reversible error. (*Ibid.*)

The matter before us is different. As the *E.D.* court noted, DCFS was required to prove that returning Fiona to mother's custody would create "some danger to the child's physical or emotional well-being." (*E.D., supra*, 217 Cal.App.4th at p. 965.) The evidence amply showed such a danger. Mother had maintained less than a year of sobriety after 15 years of intermittent drug addiction and alcohol abuse. Further, she had not demonstrated an ability to care for Fiona unsupervised for long periods of time or overnight. Her housing situation remained questionable as one of her roommates had not been approved. Fiona was only one year old and thus unable to care for herself or speak for herself. This evidence was sufficient to show a substantial risk to Fiona's well-being if returned to mother.³

³ Mother argues that a return of Fiona to her custody with family maintenance services would achieve the Legislative goal of family preservation and ameliorate any concern for Fiona's well-

DISPOSITION

The order is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT

being. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285.) The *Bridget A.* court determined that a juvenile court has authority to order a child to return to the home of a parent with continued jurisdiction and family maintenance services where such an order is appropriate. In *Bridget A.*, the mother had been having unmonitored overnight and weekend visits with her children with no concerns. (*Id.* at p. 298.) The case does not suggest a return to mother with family maintenance services is the preferred outcome where, as here, the parent has not yet progressed to unmonitored overnight visits.